

Appl. No. : 10/789,892
Filed : February 26, 2004

REMARKS

Claims 1-11, 13, 15-20, 22-28, 30-32, and 34-48 stand rejected. Attached hereto is a declaration as proper under 37 C.F.R. § 1.132 in support of the arguments presented in Applicant's prior response that was filed on March 20, 2006. The factual declaration of Alan Kessler asserts that the selection of an elastic upper support and a harder lower support provides an unrecognized advantage over the applied art. Accordingly, Claims 1-11, 13, 15-20, 22-28, 30-32, and 34-48 are pending in the application. Applicant respectfully requests consideration of the following remarks and declaration.

Interview Summary

Applicant would like to thank Examiner Stigell for taking the time to meet and discuss the outstanding Office Action in a personal interview with counsel for Applicant on September 15, 2006. During the interview, U.S. Patent No. 5,855,591 to Bierman was discussed in view of the pending claims. Specifically, Applicant explained that the anchoring system illustrated in, for example, Figure 10 of U.S. Patent No. 5,855,591 and relied upon to support the rejections of all of the independent claims includes an exemplary box-type clamp in addition to a securement device. The Office Action combined structure from the securement device with structure from the medical article to support the rejections. However, the pending claims only recite structure of the securement device. As agreed by Examiner Stigell during the interview, the structure of the medical article illustrated in, for example, Figure 10 of U.S. Patent No. 5,855,591 can not be relied upon to reject claims directed to a securement device. Accordingly, Examiner Stigell concluded that Claims 1-11, 13, 15-20, 22-28, 30-32, and 34-48 were patentable over the securement devices disclosed in U.S. Patent No. 5,855,591.

With regard to Claim 30 and the arguments made in Applicant's prior response filed on March 20, 2006, Applicant proposed during the interview to submit a declaration to further supports Applicant's argument that the securement device recited by Claim 30 provides an unrecognized advantage over the applied art. Accordingly, Applicant submits herewith a declaration from the named inventor that explains this advantage. In view of the discussion of U.S. Patent No. 5,855,591 and the submitted declaration, Claim 30 should be allowed over U.S. Patent No. 5,855,591.

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Rejection under 35 U.S.C. § 102(b) and 103(a) based upon Bierman (U.S. Patent No. 5,855,591)

The Examiner rejected independent Claim 1 as being unpatentable under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 5,855,591 to Bierman ("the '591 patent"). The Examiner also rejected independent Claim 30 as being unpatentable under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) in view of the '591 patent. In view of the arguments made in Applicant's prior response filed on March 20, 2006 and the supporting declaration submitted herewith, Applicant respectfully submits that independent Claims 1 and 30 should be allowed over U.S. Patent No. 5,855,591. Accordingly, no additional arguments are needed at this time.

Claims 2-11, 13, 15-20, 22-28, 31-32, 34-37, and 41-48 depend directly or indirectly from one of Claims 1 and 30 and, thus, are patentable for at least the same reasons that the claims from which they depend are patentable over the applied art. Therefore, allowance of Claims 1-11, 13, 15-20, 22-28, 30-32, 34-37, and 41-48 is respectfully requested.

Claims 38 through 40

Claims 35 through 37 were objected to in the office action dated November 16, 2005 as being dependent upon a rejected base claim, but would be allowable if rewritten into independent form including all of the limitations of the base claim and any intervening claim. Claims 35 through 37 were substantially rewritten as new Claims 38 through 40 in Applicant's prior response filed on March 20, 2006, respectively. As agreed during the interview, Claims 38 through 40 are allowable over the applied art.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the rejections set forth in the outstanding Office Action are inapplicable to the present claims. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Any remarks in support of patentability of one claim should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on solely that portion; rather, patentability must rest on each claim taken as a whole. Applicant respectfully traverses each of

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the Examiner's rejections and each of the Examiner's assertions regarding what the prior art discloses or teaches, even if not expressly discussed herein.


The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claims in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

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By: 
James F. Herkenhoff
Registration No. 51,241
Attorney of Record
Customer No. 20,995
(619) 235-8550

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